

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6361
DATE COMPLAINT FILED: August 27, 2010
DATE OF NOTIFICATION: September 2, 2010
LAST RESPONSE RECEIVED: September 24, 2010
DATE ACTIVATED: November 23, 2010

ELECTION CYCLE: 2010
EXPIRATION OF SOL: July 15, 2015 (earliest)
December 2, 2015 (latest)

COMPLAINANT: Dena Stebbins DeCamp

RESPONDENTS: Tea Party and Frederic B. O'Neal, in his official
capacity as treasurer (a terminated federal
committee)
Tea Party (a minor political party/party executive
committee)

RELEVANT STATUTES
AND REGULATIONS

52 U.S.C. § 30101(4)¹
52 U.S.C. § 30101(15)
52 U.S.C. § 30101(20)
52 U.S.C. § 30103
52 U.S.C. § 30104
52 U.S.C. § 30116
52 U.S.C. § 30118
52 U.S.C. § 30120
52 U.S.C. § 30125(b)
11 C.F.R. § 100.14(b)
11 C.F.R. § 100.22
11 C.F.R. § 100.24
11 C.F.R. § 102.5(b)(2)
11 C.F.R. § 106.7(b)
11 C.F.R. § 110.11
11 C.F.R. § 300.30

INTERNAL REPORTS CHECKED: Disclosure Reports and Statements

FEDERAL AGENCIES CHECKED:

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 I. INTRODUCTION

2
3 During the 2010 general election, the Tea Party [Florida]² funded at least two electronic
4 billboards and certain printed materials that expressly advocated the election of three clearly-
5 identified candidates for federal office.³ The Complaint alleges that the Tea Party [Florida]
6 lacked a federal committee or account — suggesting that the costs it incurred in connection with
7 its federal activity may give rise to violations of the registration and reporting requirements of
8 the Act — and asserts that the billboards constituted “illegal contributions” to the federal
9 candidates because those billboards apparently were financed with state and corporate funds.⁴

10 Frederic O’Neal, the treasurer of the Tea Party [Federal] and then-chairman of the Tea
11 Party [Florida], filed a sworn Response as counsel for those entities. The Response concedes
12 that the Tea Party [Florida] paid for two billboards and printed materials in connection with the
13 2010 election. It contends that those independent expenditures were permissible, however, as a
14 result of the holding in *Citizens United v. FEC*.⁵ Further, the Response appears to claim that the
15 Respondent entity had no reporting obligations with the Commission because, after registering as
16 a “national party committee” with the Commission, O’Neal concluded that the entity does not

² The Complaint identifies the Respondent as the “Florida Tea Party,” consistent with the website address displayed on the billboards: www.FloridaTeaParty.us. Nonetheless, the Response reflects that the appropriate Respondents are the “Tea Party,” an entity that has qualified as a minor party under Florida law and registered as a party executive committee with the Florida Division of Elections, and the “Tea Party,” a committee that registered and then terminated as a federal committee. The activity at issue here primarily involves the former entity, which as a convenience we refer to as the Tea Party [Florida]. We refer to the previously registered federal committee as the Tea Party [Federal] where appropriate.

³ Compl. at 1.

⁴ *Id.* The Complaint also refers generally to “multiple rule violations” without specifying the nature of those additional alleged violations. *Id.*

⁵ Resp. ¶ 16; 130 S. Ct. 876 (2010).

1 qualify as a "national committee" or a "political party" and thus obtained approval from the
2 Commission to terminate.⁶

3 The registration and reporting obligations of the Tea Party [Florida] and the type of funds
4 that it may use for federal election activities depend on how the entity is characterized under the
5 Act and relevant Commission regulations. As described at greater length below, the activities of
6 the Tea Party [Florida] resemble in some respects those of a "State party committee" or a "State
7 party organization," each of which may use only those funds subject to the limitations and
8 prohibitions of the Act for federal election activities. But other circumstances leave room for
9 doubt whether the Tea Party [Florida] constitutes either type of entity. Further, the relevant
10 entity has legally dissolved. Accordingly, we recommend that the Commission dismiss in the
11 exercise of its prosecutorial discretion the allegation that the Tea Party [Florida] impermissibly
12 used non-federal funds to conduct federal election activity.

13 Moreover, although the Tea Party [Florida] made in excess of \$1,000 in expenditures and
14 therefore crossed the statutory threshold for political committee status, the record reflects that it
15 lacked the major purpose of nominating or electing a federal candidate. As such, we further
16 recommend that the Commission find no reason to believe that the Tea Party [Florida] violated
17 the Act by failing to register and report with the Commission as a political committee.

18 On the other hand, the Tea Party [Florida] failed to report the cost of a billboard and
19 printed materials that contained express advocacy, a violation of 52 U.S.C. § 30104(c) (formerly
20 2 U.S.C. § 434(c)). The disclaimers contained in those materials also lacked the appropriate
21 authorization statements, a violation of 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and

⁶ Resp. ¶ 17.

1 11 C.F.R. § 110.11. Nonetheless, given the relatively low amount in violation and the fact that
2 the Tea Party [Florida] has dissolved, we recommend that the Commission dismiss those
3 allegations as well.

4 Finally, we recommend that the Commission find no reason to believe that the Tea Party
5 [Federal] and Frederic O'Neal in his official capacity as treasurer violated the Act or
6 Commission regulations because that entity did not engage in any of the challenged activities of
7 the Tea Party [Florida], a separate juridical entity.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Factual Background**

10 The Tea Party [Florida] qualified as a minor political party under Florida state law on
11 August 14, 2009. It was registered with the Florida Division of Elections as an executive party
12 committee until October 13, 2011, when it notified the Division of Elections that it had
13 dissolved. The Tea Party [Florida]'s amended constitution, filed in connection with its
14 submission to be a minor party, lists Frederic O'Neal as the Chairman and sole member of its
15 Executive Committee, which consisted of a Chairman, Treasurer, and Secretary.⁷

16 Soon after it registered as a minor political party in Florida, the Tea Party [Florida]
17 sought federal recognition. O'Neal filed a Statement of Organization with the Commission on
18 December 28, 2009, designating the Tea Party [Federal] as the national committee of the "Tea
19 Party" and listing himself as treasurer. The Tea Party [Federal] later sought to terminate as a
20 federal political committee, following receipt of a Request for Additional Information ("RFAI")
21 from the Reports Analysis Division ("RAD"). The RFAI indicated, in relevant part, that the Tea
22 Party [Federal] must petition the Commission through an advisory opinion to determine whether

⁷ See Attach. 1.

1 it satisfied the criteria for "national party status," citing 52 U.S.C. § 30101(4) (formerly 2 U.S.C.
2 § 431(4)) and Advisory Opinion 1995-16 (U.S. Taxpayers Party). The termination request letter
3 represented that "there has been no activity for the Tea Party [Federal] since the filing of the
4 Statement of Organization." RAD approved the termination request on March 24, 2010.

5 Nineteen individuals ran as Tea Party [Florida] candidates on the 2010 general election
6 ballot in Florida, including three candidates for federal office,⁸ fifteen state candidates, and one
7 local candidate. The state disclosure reports of the Tea Party [Florida] show that it accepted
8 \$209,855 in in-kind contributions from August 13, 2009, through October 28, 2010, most of
9 which were comprised of \$100,405 in legal services that O'Neal provided free of charge, and
10 another \$98,300 in consulting and public relations services that Douglas Guetzloe, a Florida
11 political consultant, donated through his company, Advantage Consultants ("Advantage").

12 In addition to those in-kind contributions, the state reports of the Tea Party [Florida]
13 covering the same period reflect \$122,272 in receipts and \$117,349 in disbursements.⁹ The
14 receipts include corporate donations and other donations that would exceed the contribution
15 limits of the Act. The reports do not reflect any contributions to federal candidates.

16 Following the 2010 election, the Tea Party [Florida] disclosed limited financial activity.
17 From January to September 2011, it received approximately \$17,000 in contributions — \$15,000
18 of which were in-kind contributions from Advantage for "media consulting." During the same
19 period, it made approximately \$3,300 in expenditures, the majority of which involved bank and

⁸ Two of these individuals, Margaret Dunmire and Randy Wilkinson, received and spent enough in contributions and expenditures to satisfy the Act's definition of "candidate." See 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

⁹ The Tea Party [Florida] filed a waiver in connection with its state disclosure report covering October 29 through December 31, 2010, an action that indicates that it had no activity in its campaign account during that period. See <https://doe.dos.state.fl.us/candidate/filing-campaign-reports.shtml>.

1 legal fees. Almost all of the post-election financial activity of the Tea Party [Florida] occurred
2 from January to March 2011.

3 The Response represents that, after three federal candidates qualified with the Florida
4 Department of State to run as Tea Party [Florida] nominees for federal office in May 2010, the
5 Tea Party [Florida] "engaged in numerous expenditures for brochures, billboards, and other
6 printed material listing multiple names of various state and federal Tea Party candidates."¹⁰ The
7 Response states that the Tea Party [Florida] paid Clear Channel Outdoor to rent billboards.¹¹
8 And the rental contracts provided with the Response reflect that the Tea Party [Florida] paid
9 \$8,400 to rent two digital billboards that rotated advertisements.¹²

10 Copies of photographs of a billboard submitted with the Complaint and an internet video
11 of a billboard apparently associated with the Tea Party [Florida] reflect that one or more
12 billboards expressly advocated the election of Margaret "Peggy" Dunmire and Randy Wilkinson,
13 two of the three federal candidates that ran as Tea Party [Florida] candidates in the 2010 general
14 election.¹³ The video depicts at least one digital billboard that, through a series of rotating
15 advertisements, advocates the election of Dunmire and at least two state candidates, exhorts
16 viewers to "Vote Tea Party," and announces a Tea Party [Florida] event. The advertisement
17 concerning Dunmire states, "Dunmire for U.S. Congress," prominently displays
18 "www.floridateaparty.us" below that statement, and features Dunmire's photograph. A billboard
19 advertisement concerning Wilkinson, also depicted in photographs attached to the Complaint,

¹⁰ Resp. ¶¶ 6, 7.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶¶ 13-16.

¹³ Compl. at 12-17; *Tea Party of Florida Digital Billboard* (July 2, 2010), http://www.youtube.com/watch?v=pi_LzFh0UGw&feature=player_embedded.

states, "Elect County Commissioner Randy Wilkinson, Tea Party Nominee for Congress, District 12" and prominently displays the website "www.electRandy.com" below that statement. Both advertisements included a logo apparently associated with the Tea Party [Florida].

As to the challenged printed materials, the Response represents that, like the billboards, these materials “advertise[d] and advocate[d] for the election of several candidates at the same time,” were paid for solely with funds of the Tea Party [Florida], and the costs were not shared with any candidate.¹⁴ The Response provided a copy of a flyer or leaflet that the Tea Party [Florida] had funded.¹⁵ That document lists all of the Tea Party [Florida]’s state and federal candidates, including their addresses and websites where available, under the heading, “Team Tea! The Tea Party 2010 Victory Candidates.” The document displays a “Tea Party Candidate Pledge” and a list of “Tea Party Principles” adjacent to the list of candidates. The same logo for the Tea Party [Florida] depicted on the billboard advertisements is also featured throughout the document the Response provided. The Response did not provide copies of any other printed materials or describe or quantify them.

The Response acknowledges that the Tea Party [Florida] accepted corporate contributions that were deposited into the account from which the brochures, printed material, and billboards were paid.¹⁶ It denies that the expenditures for these materials constituted contributions to candidates.¹⁷ Instead, it contends that the Tea Party [Florida]’s payments were independent expenditures because O’Neal — the chairman and sole member of the executive committee —

¹⁴ Resp. ¶¶ 11, 12, 17.

¹⁵ *Id.* ¶ 17.

16 *Id.* ¶ 12.

¹⁷ *Id.* ¶¶ 15, 16.

1 did not cooperate, consult, or act in concert with any of the candidates prior to making the
2 expenditures.¹⁸ The Response also maintains that the use of corporate money to fund the
3 expenditures was permissible in any event under *Citizens United*, which held that a corporation
4 may use its general treasury funds to make independent expenditures.¹⁹

5 The Response further denies that the Tea Party [Florida] was subject to any federal
6 registration or reporting obligations, asserting that it did not qualify as either a "national
7 committee" or a "political party" as defined at 52 U.S.C. §§ 30101(14) and (16) (formerly
8 2 U.S.C. §§ 431(14) and (16)), respectively. It cites Advisory Opinion 1995-16, the opinion that
9 RAD referenced in its RFAI, as support for that position.²⁰ Finally, the Response notes that the
10 Tea Party [Florida] disclosed all of its receipts and expenditures with the Florida Division of
11 Elections.²¹

12 After the Response was filed and this Office made certain recommendations based on
13 information then available, the Tea Party [Florida], though a new Chairperson, Margaret
14 Dunmire,²² notified the Florida Department of State that the Tea Party [Florida] had dissolved as
15 a political party. The Florida Department of State acknowledged the "disbandment" on October
16 14, 2011. Then, on October 20, 2011, the Florida Department of State received a "Certificate of

¹⁸ *Id.* ¶¶ 8, 9, 15.

¹⁹ *Id.* ¶ 16 (citing *Citizens United*, 130 S. Ct. at 876).

²⁰ *See id.* ¶¶ 4, 14.

²¹ *Id.* ¶ 13.

²² Margaret Dunmire appears to be the same individual whose federal candidacy the Tea Party [Florida] advocated in the materials that are the subject of the Complaint, and who was identified as the Treasurer of an organization called the "Tea Party National Committee" in an April 13, 2011, Statement of Organization filed with the Commission. That Statement of Organization classified the organization as a national committee of the Tea Party. On April 29, 2011, RAD sent Dunmire a RFAI notifying her that the committee must petition the Commission in the form of an advisory opinion to determine if the committee qualified for national party status. In June 2011, Dunmire submitted a pre-Advisory Opinion Request. No request was deemed complete, however, and the request was closed in September 2011. The Tea Party National Committee terminated in October 2011 after reporting no financial activity during its existence.

Organization" for a new Tea Party registration. Initial paperwork from the Florida Department of State notes that the application "represents a new party registration — former Tea Party disbanded."

B. Legal Analysis

1. The Commission Should Dismiss the Allegation that the Tea Party [Florida] Used Non-Federal Funds for Federal Election Activity

The Tea Party [Florida] admittedly financed electronic billboards that contained the exhortations, "Dunmire for U.S. Congress" and "Elect County Commissioner Randy Wilkinson . . . for Congress, District 12,"²³ and thus contained express advocacy concerning two clearly identified candidates for federal office.²⁴ Whether that fact imposed on the Tea Party [Florida] any registration and reporting obligations, or limited the nature of the funds it could use to finance the billboards, turns on whether the entity is considered a "State or local committee of a political party," a "State party organization," a "political committee" generally, or a legal "person" other than any of those types of entities.²⁵

The Act provides that "an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party . . . shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act."²⁶ The Act also

²³ Resp. ¶ 9.

²⁴ See 11 C.F.R. § 100.22(a) (recognizing that "any communication that uses phrases such as . . . 'Smith for Congress'" expressly advocates the election of that candidate).

²⁵ See 52 U.S.C. § 30101(4)(A), (8)(A), (9)(A), (11), (15) (formerly 2 U.S.C. § 431(4)(A), (8)(A), (9)(A), (11), (15)); 11 C.F.R. §§ 100.14, 300.30.

²⁶ 52 U.S.C. § 30125(b)(1) (formerly 2 U.S.C. § 441i(b)(1)); 11 C.F.R. § 300.32(a). The Act and Commission regulations identify four types of federal election activity ("FEA"): (1) voter registration activity during the period 120 days before a federal election; (2) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for federal office appears on the ballot; (3) a public communication that refers to a clearly identified candidate for federal office and that promotes or supports, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates; and (4) services provided during any calendar month by an employee of a state, district, or local party committee who

1 provides that national party committees may not solicit, receive, or spend funds that are not
2 subject to the limitations, prohibitions, and reporting requirements of the Act.²⁷ These two
3 subsections "are related in that the [state and local committee provision] is intended to prevent
4 the evasion of the [national party provision]."²⁸

5 As noted, the Act and Commission regulations recognize a variety of entities that the Tea
6 Party [Florida] arguably may constitute — a State or local committee of a political party, a State
7 party organization, a "political committee" generally — each with attendant obligations and
8 prohibitions under the relevant federal campaign finance laws. We consider the application of
9 each type in turn.

10 a. The Tea Party [Florida] Does Not Appear to Qualify as Either a
11 State or Local Committee of a Political Party
12

13 We first consider whether the Tea Party [Florida] should be deemed a State or local
14 committee of a political party. The Act and Commission regulations define a "State committee"
15 as an organization that, by virtue of the bylaws of a political party, is responsible for the day-to-
16 day operation of that political party at the state level "as determined by the Commission."²⁹ The
17 Commission has suggested that it interprets the phrase "as determined by the Commission" to

spends more than 25 percent of his or her compensated time during that month on activities in connection with a federal election. 52 U.S.C. § 30101(20) (formerly 2 U.S.C. § 431(20)); 11 C.F.R. § 100.24. The billboards at issue here are type three FEA because they are public communications, *see* 11 C.F.R. § 100.26, that promote federal candidates Dunmire and Wilkinson.

²⁷ 52 U.S.C. § 30125(a)(1) (formerly 2 U.S.C. § 441i(a)(1)); 11 C.F.R. § 300.10(a).

²⁸ *See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,065 (July 29, 2002) (Explanation and Justification) ("E&J"); *McConnell v. FEC*, 540 U.S. 93, 161 (2003) (recognizing that subsection (b) "is designed to foreclose wholesale evasion of [the] anticorruption measures" of subsection (a)).

²⁹ 52 U.S.C. § 30101(15) (formerly 2 U.S.C. § 431(15)); 11 C.F.R. § 100.14.

1 refer to "the availability of the advisory opinion process."³⁰ Recognition of State committee
2 status through the advisory opinion process "makes [State committees] eligible for higher
3 contribution limits and permits them to make coordinated expenditures."³¹

4 The Tea Party [Florida] did not seek a Commission determination that it constituted a
5 State committee of a political party through the advisory opinion process. The Commission has
6 not conclusively stated, however, whether the advisory opinion process is necessary or sufficient
7 to attain State committee status. As such, the failure of the Tea Party [Florida] to seek such
8 authorization may not resolve the question whether that status is appropriate on the facts
9 presented in an enforcement proceeding.³²

10 Nonetheless, even assuming the lack of an advisory opinion determination does not
11 dispose of the question, it does not appear that the record here would satisfy the framework that

³⁰ See, e.g., Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,066 (July 29, 2002) (explanation and justification).

³¹ *Id.* On the other hand, the Commission has explained that the advisory opinion process is not appropriate for establishing a subordinate committee of a State committee. *Id.* A subordinate committee of a State committee is "any organization" that is "under the control or direction of the State committee" and is "directly or indirectly established, financed, maintained, or controlled" by the State committee. 11 C.F.R. § 100.14(c).

³² Although the Act and Commission regulations do not appear to preclude it, we know of no instance in which the Commission has recognized the State committee status of an entity through the administrative enforcement process. In MUR 5783 (Green Party of Luzerne County), the Commission found reason to believe that a respondent made excessive in-kind contributions to one or more federal candidates when it coordinated ballot expenditures. See Factual and Legal Analysis at 6-7, MUR 5783 (Green Party of Luzerne County) (June 18, 2007). In so doing, the Commission rejected the respondent's argument that the Green Party of Pennsylvania had, as a state party committee, assigned the respondent its coordinated expenditure authorization, in part because the Green Party of Pennsylvania "ha[d] not requested qualification as a state party committee from the Commission." *Id.* at 7-8. The Green Party of Pennsylvania, however, was not a respondent in the MUR and was alleged to have been "disorganized and had lost status as a party in Pennsylvania." See Sec. Gen. Counsel's Report at 4, MUR 5783 (Green Party of Luzerne County). Reliance on the advisory opinion process for obtaining party committee status developed prior to the 2002 amendments to the Act and was intended to protect entities seeking the benefits of party status — namely, higher contribution limits and the ability to make coordinated expenditures. See E&J, 67 Fed. Reg. at 49,066; see also Commission Campaign Guide for Political Party Committees, Append. A (explaining how "nonmajor political parties" may qualify for party committee status). Although the Commission has never determined that an organization qualified for State committee status outside the advisory opinion process, the Commission may deem it appropriate to do so in other circumstances, for instance when, as here, an organization is allegedly conducting its activities in violation of the Act.

1 the Commission has developed for construing such requests in its prior advisory opinions, in at
2 least three respects.

3 *First*, the Commission has emphasized that an organization seeking State committee
4 status "must itself possess an official party structure."³³ But the originating documents of the
5 Tea Party [Florida] do not reflect any such formal party structure. The constitution of the Tea
6 Party [Florida] is unclear about the structure of the organization and its role at the State level. In
7 prior advisory opinions, the Commission has explained that a State committee's bylaws or other
8 governing documents must "set out a comprehensive organizational structure" and "clearly
9 identify the role" of the organization at the state level.³⁴ Here, the entity's constitution stated that
10 it was organized to implement its principles, in part, by "chartering affiliate parties throughout
11 the United States" and nominating candidates for U.S. President and Vice President.³⁵ Its
12 constitution further states that its Executive Committee shall charter no more than one affiliate
13 party in each state, territory, and the District of Columbia.³⁶ Otherwise, the formative documents
14 do not reflect any comprehensive organizational scheme or clearly identify the role that the Tea
15 Party [Florida] was to play at the state level.

16 *Second*, a State committee must operate with responsibility for day-to-day operations
17 specifically on the state level.³⁷ But the Tea Party [Florida] also sought to register with the
18 Commission as a national committee through its filing as the Tea Party [Federal]. It therefore
19 appears that, although many of the responsibilities of the Tea Party [Florida] involved state-level

³³ Advisory Op. 2010-29 (Working Families Party of Oregon) at 3.

³⁴ See, e.g., Advisory Op. 2007-23 (Independence Party of New York).

³⁵ Attach. 1 at 4 (Article 3).

³⁶ *Id.* at 4-5 (Article 5).

³⁷ See, e.g., Advisory Op. 2010-29 (Working Families Party of Oregon) at 4.

1 activity and candidates, it also appears to have intended to act to some extent on the national
2 level.³⁸

3 *Third*, the Tea Party [Florida] gained Florida ballot access for individuals who qualified
4 as candidates under the Act and gained recognition by the State of Florida as a minor political
5 party. To that extent, then, the Tea Party [Florida] is on similar footing to other entities that
6 successfully have sought State committee status through the Commission's advisory opinion
7 process. But the Commission has never recognized an entity as a "State committee" solely by
8 virtue of the operation of state law — *i.e.*, the recognition of the entity as a minor political party
9 in Florida — which appears to be the sole basis for concluding that the entity's activities in
10 Florida satisfy the definition of a State committee of a political party.³⁹

11 Thus, because the Tea Party (Florida)'s organizational structure and its role at the State
12 level are unclear, we cannot say that the Tea Party is in fact a "State committee of a political
13 party" as defined by the Act or under the extant guidance of the Commission on that question.

14 We also must consider whether the Tea Party was a "local committee" of a political
15 party. Pursuant to the Act a "local committee" is a committee that is responsible for the day-to-
16 day operations of a political party at a local level such as a city, county, ward, or other State

³⁸ The Commission has previously found that an organization's intent is relevant when considering party committee status. For instance, in Advisory Opinion 1997-18 (California Reform Party Congressional Committee), the Commission concluded that the California Reform Party Congressional Committee was not a local party committee because, in part, it intended to operate on a statewide, rather than local, level. Commission regulations use similar criteria in defining "district" or "local" committees as it does "State" committees, namely requiring the committees to be "part of the official party structure." See 11 C.F.R. §100.14. But while State committees operate on the state level, district and local party committees are "responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State." *Id.* § 100.14(b).

³⁹ See, e.g., Advisory Op. 2012-36 (Green Party of Connecticut) (recognizing that organization's bylaws indicated the organization was part of official party structure of a national party); Advisory Op. 2012-04 (Justice Party of Mississippi) (recognizing that organization's bylaws identified official party structure); Advisory Op. 2010-29 (Working Families Party of Oregon) (recognizing that the organization's bylaws and qualification as a State minor political party evidenced official party structure); Advisory Op. 2010-22 (Working Families Party of Connecticut) (same); Advisory Op. 2008-12 (Independent Party of Oregon) (same).

1 subdivision.⁴⁰ The Tea Party [Florida]'s activities within the state do not appear to have been
2 focused on local issues, however, and its constitution specifically contemplated operating at a
3 national level. Further, the slate of candidates the Tea Party [Florida] sponsored included a state-
4 wide candidate, the agriculture commissioner, and numerous state house candidates running for
5 seats that were not confined to any particular geographic region. Thus, the Tea Party [Florida]
6 does not appear to have been responsible for the day-to-day operations of a political party on a
7 local level and would not qualify as a "local committee of a political party" either.

8 b. The Tea Party [Florida] Does Not Appear to Be a "State Party
9 Organization," But the Term Is Ambiguous as Applied Here
10

11 We next consider whether the Tea Party [Florida] may constitute a "State party
12 organization." The Bipartisan Campaign Reform Act of 2002 ("BCRA"), requires, in pertinent
13 part, that funds expended by a State, district, or local party "committee" of a political party for
14 FEA or entities established, maintained, financed, or controlled by them must be made with
15 funds subject to the Act's limitations, prohibitions, and reporting requirements — federal funds
16 or a mixture of federal and Levin funds.⁴¹ The Commission's implementing regulations,
17 however, also apply that restriction to State, district, and local "organizations" of political
18 parties, regardless of whether those organizations constitute a State, district, or local party
19 committee.⁴²

20 The term "party organization" appears in several other Commission regulations that both
21 pre- and post-date the BCRA soft-money provisions. Although certain consequences flow from
22 being organized in that fashion, the term "party organization" is not expressly defined in either

⁴⁰ See 11 C.F.R. § 100.14(b).

⁴¹ 52 U.S.C. § 30125(b)(1) (formerly 2 U.S.C. § 441i(b)(1)).

⁴² 11 C.F.R. § 300.30 (emphasis added).

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1 the Act or the Commission's regulations. For example, any State, district, or local "party
2 organization" that makes payments for FEA must establish one or more Levin accounts from
3 which to make such payments, or must demonstrate through a reasonable accounting method
4 approved by the Commission that the organization has received sufficient federal or Levin funds
5 to make the payment and keep records available for examination.⁴³ In addition, the
6 Commission's regulations also apply the allocation rules applicable to State, district, and local
7 party committees that make expenditures and disbursements in connection with federal and non-
8 federal elections to "party organizations" that are not political committees. And that regulation
9 further requires "party organizations" to allocate disbursements for such activities between
10 federal and non-federal accounts, or to use a reasonable accounting method in lieu of
11 establishing separate accounts.⁴⁴

12 Thus, although the Commission's regulations reference state "party organizations" and
13 their obligations, none of those provisions define the reach of the term. When a regulatory term
14 is ambiguous, we look to the wording of the provision in which it appears and the purpose of the
15 regulation in question to assist in construing its meaning.⁴⁵ Here, the Commission promulgated
16 the regulations in question to implement section 30125(b) of the Act (formerly section 441i(b)).
17 By its plain terms, section 30125(b) covers State, district, or local committees of a political party

⁴³ 11 C.F.R. § 102.5(b)(2); *see id.* § 102.5(a) (2001) (referencing "state party organization" prior to the enactment of BCRA).

⁴⁴ *Id.* § 106.7(b); *see id.* § 106.5 (2001) (referencing "party organization" prior to the enactment of BCRA).

⁴⁵ *See Northern Indiana Pub. Serv. Co. v. Porter County Chapter of the Izaak Walton League of Am., Inc.*, 423 U.S. 12, 15 (1975) (holding that an agency's interpretation of an ambiguous regulatory term "sensibly conform[ed] to the purpose and wording of the regulations").

1 as well as those entities that they establish, finance, maintain, or control.⁴⁶ This provision was
2 intended to prevent circumvention of BCRA's soft money restrictions.⁴⁷

3 The Commission has also amended the regulatory definition of "State committee" to limit
4 its scope to only those organizations that are "part of the official party structure."⁴⁸ As the
5 Commission explained, "requiring a committee to be part of the official party structure before it
6 satisfies the regulatory definition [of a State committee, subordinate committee, district, and
7 local committee] is an important safeguard, ensuring that BCRA's provisions sweep only as far
8 as necessary to accomplish its ends."⁴⁹ The Commission has further explained that a State
9 committee includes "purportedly unofficial party organizations" that are established, financed,
10 maintained, or controlled by a State, district, or local committee.⁵⁰ Consistent with this
11 interpretation, the Commission concluded in an advisory opinion that a "regional party
12 organization" was a State committee because it was established, financed, maintained, or
13 controlled by several State committees.⁵¹

⁴⁶ 52 U.S.C. § 30125(b) (formerly 2 U.S.C. § 441i(b)).

⁴⁷ See *McConnell*, 540 U.S. at 654-55.

⁴⁸ 11 C.F.R. § 100.14(a).

⁴⁹ See E&J, 67 Fed. Reg. at 49,065; see also 11 C.F.R. § 100.14(a).

⁵⁰ *Id.* at 49,065-66 (amending the term "subordinate committee of a State, district, or local committee" to include organizations they establish, finance, maintain, or control). The Commission's amended regulatory definition of a State committee was upheld in *Shays v. FEC*, 337 F. Supp. 2d 28, 122-24 (D.D.C. 2004), as a permissible construction of the Act. The court agreed with the Commission's argument that "[i]t is difficult to imagine how" an organization could meet the criteria for State committee status "without being part of the 'official party structure.'" See *Shays*, 337 F. Supp. 2d at 122 (quoting Commission's summary judgment motion). The court also agreed that the requirement was "an important safeguard," ensuring that "the party is not responsible for unofficial groups calling themselves 'Democrats' or 'Republicans,' even though they are not an actual component of the party itself." *Id.*

⁵¹ See Advisory Op. 2004-12 (Democrats for the West). In MUR 6062 (Harry Truman Fund), a state political action committee from New Mexico not registered with the Commission financed mailers urging recipients to vote Democratic. Although the committee admitted that the mailers constituted FEA, the committee asserted that it was not required to use federal funds to pay for the mailers because it was not a political committee, a State or local party committee, or an entity established, financed, maintained or controlled by a party committee. The Commission split

1 Given the language of those regulations as well as the relevant provision of the Act that
2 the regulations containing the term "party organization" implement, we conclude that a state
3 "party organization" would also include entities that are established, financed, maintained, or
4 controlled by a State, district, or local committee of a political party. We are aware of no facts
5 on the record before the Commission in this matter, however, that suggest that the Tea Party
6 [Florida] was established, financed, maintained, or controlled by any such party committee.⁵²
7 On the other hand, it remains unclear whether the term "State party organization" may extend
8 beyond those entities that are formally established, financed, maintained, or controlled by a party
9 committee.⁵³

3-2 on recommendations to find reason to believe that the Harry Truman Fund violated 52 U.S.C. § 30125(b) (formerly 2 U.S.C. § 441i(b)) and investigate whether it was established, financed, maintained, or controlled by the New Mexico State Democratic Party. *See* Certification, MUR 6062 (Apr. 22, 2009) (Harry Truman Fund).

⁵² To determine whether an entity is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee, the Commission examines ten different factors in context of the overall relationship between the organization and the committee. *See* 11 C.F.R. § 300.2(c). None of these factors appear to be present here.

⁵³ We note that MUR 5486 (Libertarian Party of Ohio) also involved a "State party organization" issue where a minor political party under state law — like the Tea Party [Florida] here — allegedly had engaged in FEA without registering and reporting with the Commission. The approved First General Counsel's Report cites 11 C.F.R. §§ 102.5(b) and 106.7(b) for the propositions that State party organizations that are not political committees must use federally compliant funds for contributions, expenditures, and exempt party activity and must allocate if they use a single account for federal and non-federal disbursements. First Gen. Counsel's Rpt. at 5-6, MUR 5486. That Report concludes that some of the committee's activity may have been FEA that was required to be allocated between federal and Levin funds. The Commission ultimately found no reason to believe that the committee violated the political committee registration and reporting requirements, however, because it did not surpass the \$1,000 expenditure threshold. The Commission did not determine whether the organization was in fact a "State party organization" because of the low amount of the relevant expenditures and the group's high percentage of federally compliant funds. *See* Certification, MUR 5486 (May 4, 2005); First Gen. Counsel's Rpt. at 17 n.19, MUR 5486.

MUR 6153 (New Mexico Democratic Legislative Campaign Committee) also addressed the obligation of an organization to use federally permissible funds for FEA regardless of political committee status. In that matter, a state party committee not registered with the Commission financed mailers that advocated the election of both a state and federal candidate. Although the committee admitted that the mailers constituted FEA, the committee asserted that it did not meet the threshold for political committee status and that it received sufficient federally compliant funds to pay for the federal portion of the mailer. In light of the minimal cost of the mailer and the fact that the committee may have used federal funds to pay for the federal portion of that mailer, the Commission dismissed. *See* Certification, MUR 6153 (May 12, 2009).

1 In light of this ambiguity concerning the reach of the relevant regulatory terms, along
2 with the fact that the Tea Party [Florida] dissolved shortly after the activity in question, we
3 recommend that the Commission dismiss the allegation that the Tea Party violated 52 U.S.C.
4 § 30125(b) (formerly 2 U.S.C. § 441i(b)) as a matter of prosecutorial discretion.⁵⁴

5 c. The Tea Party Was Not a Federal Political Committee

6 We must also consider whether the Tea Party [Florida] constitutes a “political
7 committee,” as the FEA requirements operate independently of political committee status.⁵⁵ The
8 Act defines a “political committee” as any committee, club, association, or other group of
9 persons which receives contributions or makes expenditures for the purpose of influencing a
10 federal election which aggregate in excess of \$1,000 during a calendar year.⁵⁶ The Tea Party
11 [Florida] meets the Act’s dollar amount threshold because its expenditures attributable to federal
12 candidates for 2010 appears to exceed \$1,000 given the cost of the billboard rental and available
13 information concerning its content.⁵⁷ The major purpose of the Tea Party [Florida], however,
14 does not appear to be the nomination or election of federal candidates.⁵⁸ As such, it is not a
15 political committee under the Act.⁵⁹

⁵⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁵⁵ 11 C.F.R. § 300.32(a).

⁵⁶ See 52 U.S.C. § 30101(4)(1), (8)(A), (9)(A) (formerly 2 U.S.C. §§ 431(4)(A), (8)(A), (9)(A)). A group must register with the Commission by filing a Statement of Organization within 10 days after it becomes a political committee. See *id.* § 30103 (formerly 2 U.S.C. § 433). A political committee must then file periodic disclosure reports with the Commission. See *id.* § 30104(a) (formerly 2 U.S.C. § 434(a)).

⁵⁷ As noted, two of six advertisements contained on the digital billboard associated with the Tea Party [Florida] expressly advocated the election of federal candidates. See *supra* Part II.A.. Therefore, one third of the cost of the billboard rental alone, or \$2,800, was attributable to federal candidates.

⁵⁸ To address constitutional overbreadth concerns, the Supreme Court has held that only organizations under the control of a candidate or the major purpose of which is the nomination or election of a candidate may qualify as a political committee. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). The Commission has long applied the Court’s major purpose test in determining whether an organization is a “political committee” under the Act, and has interpreted that test as limited to organizations whose major purpose is federal campaign activity. See Political Committee

1 The "overall conduct" of the Tea Party [Florida] does not suggest that the nomination or
2 election of federal candidates was the major purpose of the entity. The Tea Party [Florida] made
3 no contributions to candidates, nor does its spending appear to have been so extensive as to
4 conclude that its major purpose was federal campaign activity.⁶⁰ Rather, the Tea Party [Florida]
5 appears to have focused most of its spending and resources in 2010 on state candidates and on
6 promoting and defending itself as a political party rather than on federal campaign activity.
7 Indeed, sixteen of its nineteen candidates ran for state or local office. According to its state
8 disclosure reports, the Tea Party [Florida] assisted its state candidates by reimbursing them for
9 their filing fees. Although some facts may arguably weigh in favor of construing the entity's
10 major purpose otherwise — for example, its activities were akin to that of a "political party"⁶¹
11 and it supported three individuals seeking federal office under its name in the 2010 general
12 election, two of whom qualified as federal "candidates" under the Act⁶² — on balance we

Status, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007) (supplemental explanation and justification). To determine an entity's "major purpose," the Commission explained that it considers a group's "overall conduct," including public statements about its mission, organizational documents, government filings, the proportion of spending related to "federal campaign activity," and the extent to which fundraising solicitations indicate funds raised will be used to support or oppose specific candidates. *Id.* at 5597, 5605.

⁵⁹ Because we cannot conclude that the Tea Party [Florida] was a State or local committee, we apply the major purpose test in addition to the expenditure threshold. *Compare* MUR 6683 (Fort Bend County Democratic Party).

⁶⁰ See Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. at 5601 (to determine major purpose the Commission will "evaluate the organization's spending on Federal campaign activity, as well as any other spending by the organization"); see also *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238, 262 (1986) (specifically concluding that a group would be classified as a political committee if its independent spending became so extensive that its major purpose may be regarded as campaign activity).

⁶¹ A "political party" is defined as an organization that nominates or selects candidates for election to Federal office. 52 U.S.C. § 30101(16) (formerly 2 U.S.C. § 431(16)); 11 C.F.R. § 100.15.

⁶² A "candidate" is defined as an individual that receives contributions or expends funds in excess of \$5,000. See 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)); 11 C.F.R. § 100.3.

1 conclude that the overall conduct of the Tea Party [Florida] was not focused on the nomination
2 or election of federal candidates.⁶³

3 Accordingly, we recommend that the Commission find no reason to believe that the Tea
4 Party [Florida] violated 52 U.S.C. §§ 30103 and 30104(a) (formerly 2 U.S.C. §§ 433 and 434(a))
5 by failing to register and report as a political committee.

6 2. The Tea Party [Florida] Failed to Report the Cost of Certain Expenditures
7 and to Include Appropriate Disclaimers on Its Billboards
8

9 The Act requires that a person or a group other than a political committee that makes
10 independent expenditures of over \$250 during a calendar year must file a report with the
11 Commission.⁶⁴ The Tea Party [Florida] failed to file reports when it made expenditures for
12 billboards that expressly advocated the election of Dunmire and Wilkinson. It also may have
13 been required to file a report for the Tea Party [Florida] flyer included in the Response,
14 depending on the cost of that flyer. The contracts submitted with the Response and the state
15 disclosure reports of the Tea Party [Florida] reflect that it paid \$8,400 on June 18, 2010, to rent
16 the two digital billboards for the period June 25 to July 22, 2010. Only two of the six
17 advertisements on the digital billboard — or \$2,800 of the total cost — expressly advocated for
18 federal candidates.⁶⁵ Given the low amount at issue and the fact that the Tea Party [Florida]
19 dissolved in October 2011, we recommend that the Commission dismiss the allegation that the

⁶³ We are unable to determine what percentage of the Tea Party [Florida]'s spending was for the nomination or election of federal candidates in 2010. But the circumstances described above suggest that the Commission need not assess the proportionality of the entity's spending in 2010 to determine that the major purpose test is not met. It is unclear whether the Tea Party [Florida] made any expenditures or contributions that would count toward the \$1,000 political committee statutory threshold for 2011.

⁶⁴ See 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)); 11 C.F.R. § 109.10.

⁶⁵ The current record does not reflect the related production costs of the two advertisements at issue, but given the digital nature of the messages published on the billboard it is reasonable to conclude that those costs would not have been significant.

1 Tea Party [Florida] violated 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)) as a matter of
2 prosecutorial discretion.⁶⁶

3 The Act also requires that a person or group other than a political committee that makes a
4 disbursement for a communication that expressly advocates the election of a federal candidate
5 must include a disclaimer stating whether or not it is authorized by a candidate, an authorized
6 committee or an agent of either.⁶⁷ If the communication is not authorized by a candidate, an
7 authorized committee, or an agent of either, it must clearly state the name and permanent street
8 address, telephone number, or World Wide Web address of the person who paid for it and that it
9 is not authorized by any candidate or candidate's committee.⁶⁸

10 The Response maintains that the billboards and printed materials that the Tea Party
11 [Florida] financed carried proper disclaimers.⁶⁹ The disclaimers on the billboard advertisements
12 do not include an authorization statement. Rather, the billboard disclaimers simply read,
13 "Political Advertisement paid for and approved by the Tea Party" followed by the website
14 address of the Tea Party [Florida]. Nonetheless, again in light of the minimal amount at issue
15 and the dissolution of the relevant entity, we recommend that the Commission also dismiss the
16 allegation that the Tea Party [Florida] violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441(d))
17 and 11 C.F.R. § 110.11 as a matter of prosecutorial discretion.⁷⁰

⁶⁶ See *Heckler*, 470 U.S. at 821.

⁶⁷ See 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11.

⁶⁸ 52 U.S.C. § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(b)(3).

⁶⁹ Resp. ¶ 10.

⁷⁰ See, e.g., MUR 6163 (Houghton Co. Dem. Comm.) (dismissing independent expenditure and disclaimer violations where the federal portion of expenditures for newspaper inserts was \$255.38 and an additional \$1,482 in radio and newspaper advertisements were potentially federal expenditures); MUR 6164 (Mike Sodrel) (dismissing independent expenditure reporting violation where amount in violation was "less than \$10,000"); MUR 6170

4. Recommendation as to the Tea Party [Federal]

The activities at issue in this matter were financed and conducted by the Tea Party [Florida], a minor political party, as evidenced by its state disclosure reports, and they apparently occurred after RAD approved the federal committee's request to terminate. Accordingly, we recommend that the Commission find no reason to believe that the Tea Party [Federal] and Frederic O'Neal in his official capacity as treasurer violated the Act or Commission regulations.

IV. **RECOMMENDATIONS**

1. Dismiss the allegation that the Tea Party [Florida] violated 52 U.S.C. § 30125(b) (formerly 2 U.S.C. § 441i(b)).
2. Dismiss the allegation that the Tea Party [Florida] violated 52 U.S.C. § 30104(c) (formerly 2 U.S.C. § 434(c)).
3. Dismiss the allegation that the Tea Party [Florida] violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and 11 C.F.R. § 110.11.
4. Find no reason to believe that the Tea Party [Florida] violated 52 U.S.C. §§ 30103 and 30104(a) (formerly 2 U.S.C. §§ 433 and 434(a)).
5. Find no reason to believe that the Tea Party [Federal] and Frederic B. O'Neal in his official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended, and Commission regulations.
6. Approve the attached Factual and Legal Analysis.
7. Approve the appropriate letters.

8. Close the file.

March 3, 2015

Date _____

BY:

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